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Western Area Power Administration
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January 25, 2005

Honorable Magalie R. Salas
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Room 1A, East
Washington, DC 20426

Re: Western Area Power Administration
Docket No. NJ05-____-000

Dear Secretary Salas:

Pursuant to the Federal Energy Regulatory Commission's (Commission) Order Nos. 2003, 2003-A and 2003-B,¹ and Sections 35.28(e) and (f) of the Commission's Regulations,² the United States Department of Energy, Western Area Power Administration (Western) hereby submits revisions to its non-jurisdictional open access transmission tariff (OATT). The purpose of the filing is to revise certain terms of Western's original OATT and to incorporate the Large Generator Interconnection Procedures (LGIP), and a Large Generator Interconnection Agreement (LGIA). Western submitted a filing to the Commission on January 20, 2004, indicating it was not adopting the pro forma LGIA and LGIP and that it would file a revised tariff with the Commission at a later date. Western further indicated that its existing OATT and interconnection procedures would remain in effect until such time as Western filed its OATT revision.

¹ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Order No. 2003), order on reh'g, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), order on reh'g, Order No. 2003-B, 109 FERC ¶ 61,287 (2004) (Order 2003-B).

² 18 C.F.R. § 35.28(e) and (f) (2004).

Western has made modifications to its OATT that was filed in January of 1998, and later approved by the Commission.³ The changes to the LGIP and LGIA primarily incorporate the pro forma LGIP and LGIA promulgated under Order Nos. 2003, 2003-A, and 2003-B. However, Western's LGIP and LGIA are modified to accommodate: (1) Western's status as a non-jurisdictional entity before the Commission; (2) Western's status as a Federal Power Marketing Agency; (3) Western's operation in multiple Regional Reliability Organizations; and (4) ministerial clarifications. Western has also made the changes outlined in Appendix B to Order No. 2003-B, unless otherwise noted.

Western held an informal public meeting on November 8, 2004 in Denver, Colorado. Western presented its proposed changes to the OATT, LGIA and LGIP. Comments were accepted at that meeting and interested parties were encouraged to submit comments to Western as described in the Federal Register Notice.⁴ Responses to these comments are posted on Western's web site at www.wapa.gov, and were considered in the instant filing.

As provided by Sections 35.28(e) and (f) of the Commission's Regulations⁵, Western requests that the Commission issue a declaratory order determining that with this filing, Western's OATT maintains its status as a "safe-harbor" tariff, ensuring that it may not be denied transmission access by any FERC-jurisdictional public entity. Western has already developed transmission rates for use in the OATT under separate public processes pursuant to applicable Federal law and regulation. Those rates have already been approved by the Commission.

Order No. 2003 provides that non-jurisdictional utilities maintaining safe-harbor open access tariffs must adopt an LGIP and an LGIA that "substantially conform to or are superior to" the Commission's pro forma documents in order to maintain their safe-harbor status.⁶ This filing is made to comply with that mandate and includes modifications to the OATT, LGIA and LGIP that deviate from the pro forma documents consistent with the Commission's guidelines that it will entertain provisions that deviate from the pro forma language when necessary to reflect "legal and regulatory restrictions on non-jurisdictional

³ United States Department of Energy - Western Area Power Administration, 99 FERC ¶ 61,062 (2002).

⁴ 69 Fed. Reg. 62041 (October 22, 2004).

⁵ 18 C.F.R. § 35.28(e) and (f) (2004).

⁶ Order No. 2003, ¶¶ 841-42; Order No. 2003-A, ¶ 57.

entities' contractual rights. . . ."⁷ This filing letter outlines those changes and briefly explains why they are necessary. Minor changes that were made to the documents such as typographical errors, corrections in abbreviations and other ministerial corrections are not discussed in the filing letter, but are indicated in the attached redline files.

I. PROPOSED CHANGES TO THE WESTERN'S APPROVED OATT AND THE PRO FORMA LGIP AND LGIA

(A) OATT

1) Section 1.5

As outlined in further detail below, Western has added a deposit requirement into the definition of a completed application. Western deleted the deposit requirement of the pro forma tariff in its Commission approved OATT. As described in more detail below, Western is retaining its application fee and will require transmission customers to provide a deposit in order to have a completed application for transmission service.

2) Section 1.27

Western has expanded the definition of non-firm service in its OATT. Under the existing OATT, Non-Firm Point-to-Point service is limited in term no more than one month of service. Section 1.27 has been modified to allow Western's Regions the option of providing longer-term Non-Firm Point-to-Point service. The details of this service will be explained in business practices to be posted on the applicable Region's OASIS. With this revision to its OATT, Western has allowed for some flexibility to meet the unique needs of renewable resources. The industry is currently reviewing options that will enable renewable resources, such as wind, to obtain transmission service that better fits that resource's requirements. Western's intent is to allow flexibility in its OATT to incorporate a service that would be similar to what some entities have termed priority non-firm service.

3) Section 3

Section 3 of the OATT allows a Transmission Customer to request that Western purchase ancillary services from a third party if Western does not have sufficient Federal

⁷ Order No. 2003, ¶ 844, Order 2003-A, ¶ 358.

generation to provide the necessary service. The current OATT also allows Western to pass the costs of purchasing the service on to the Transmission Customer. As a Federal entity, Western has limited financial resources to procure services. Therefore, Western needs the ability to collect costs for such ancillary services in advance, before Western is required to make payment to the third party. Section 3 of the OATT has been modified to allow Western to request advance payment for this service. This does not affect the Transmission Customer's option to self-provide ancillary services.

4) Section 7.2

The late payment provisions of Western's current OATT comply with the pro forma tariff provisions. However, Western has modified the late fee provisions in the OATT to comply with the methodology set forth in Western's standard General Power Contract Provisions which apply to Western's other business customers. In the seven years since Western adopted the pro forma tariff interest provisions, Western has experienced significant untimely payments under its OATT. The current low rates of interest have resulted in late payment charges that are insignificant and are not deterring late payments by Transmission Customers. While Western's new provisions result in higher interest charges than the OATT methodology, this change is needed to ensure that Western does not experience cash-flow or antideficiency concerns due to excessive late payments. Western has also added language which gives it discretion to require Transmission Customers that are chronically late submitting payments to provide a form of security identified in Section 11, including advance payment.

5) Section 11

Section 11 of the OATT establishes how the Transmission Customer will demonstrate its ability to make payments and fulfill its financial obligations under OATT service agreements. As a means of assuring the Transmission Customer meets its financial obligation, Western has made a change that would allow it to exercise an option of requiring a Transmission Customer to pay its bills in advance. Providing Western with an additional option to ensure Transmission Customers continue to make payments for service is in the best interests of Western and all Transmission Customers. Unlike a deposit or letter of credit, this option does not require a Transmission Customer to commit double the necessary funds to continue receiving service once it has demonstrated an inability to meet its payment obligations. This provision will only be

used in situations for which the creditworthiness of the Transmission Customer is a legitimate concern.

6) Section 12

Western added language which indicates that future Regional Reliability Councils or a regional transmission group will be incorporated into the dispute resolution process, where applicable.

7) Section 13.3, 14.3

Western inserted the date 60 days after Western's approved OATT was originally published in the Federal Register.

8) Section 15.3

In its original OATT filing, Western removed the security deposit language. Because Western is now using deposits and escrow funds, this language was reinserted into the OATT. Western's security deposit changes are described in further detail in Section 17.3.

9) Section 17.3

The pro forma tariff requires a deposit equal to the first month's service in conjunction with an application for transmission service and this deposit must be returned with interest at the end of the service term. Western chose not to adopt this requirement from the pro forma tariff in its original tariff filing. Since its original filing, Western has experienced an increase in speculative requests which have caused substantial congestion in Western's OASIS queue. As a result, Western is adopting the pro forma tariff deposit concept and will now require all Firm Point-to-Point requests of one year or greater, all new Network Integration Transmission Service (NITS) Transmission Customers, and all new NITS generators to submit a deposit equal to an estimate of the first month's service charges.

The deposit requirement shall be capped at a maximum of \$100,000, regardless of the service being requested. Western will credit the deposit to the first period of service taken by the Transmission Customer. While Western will not pay interest on this deposit, a Transmission Customer will be given an option of establishing an interest bearing escrow account from which Western can withdraw funds. The deposit will be returned if a service agreement is not executed or it will be used as a credit toward the first month of service. For Non-Firm requests, and

for requests of less than one year, the current practice of not requiring an application fee or deposit will continue.

10) Sections 17.4, 17.6, 19.1, 19.4, 20.3

Western reinserted pro forma tariff language related to the deposit requirement under Section 17.3 except for the payment of interest clause. As mentioned above, the customer will have the option to place the deposit in an interest bearing account that the Customer establishes.

11) Section 22.2

Pro forma tariff language deleted from Western's initial OATT filing was reinserted that clarifies that a customer is not expected to provide any additional deposit on a modification to a transmission request.

12) Section 28.2

Western clarified that it must have both appropriations and expenditure authority, as discussed in more detail in the changes to Attachment J, paragraph 2.2 below.

13) Section 29.2

Corresponding changes were made to apply the deposit concept adopted under Section 17.3 to NITS.

14) Sections 32.1, 32.4

Pro forma tariff language deleted from Western's initial OATT filing was reinserted that provides for the refund of the deposit if a customer does not execute a system impact study agreement.

15) Section 34.3

OATT Section 34.3 regarding the calculation of the Transmission System peak has been updated to agree with Western's Commission-approved transmission rate schedules. In Western's current rate schedules, the Transmission System peak load includes only Long Term Firm Point-to-Point Transmission Service reservations. However, Section 34.3 of the existing OATT, which currently conforms to the pro forma tariff, indicates that all (long and short-term) Firm Point-to-Point reservations should be included in the system load calculation. The language is being clarified to indicate that short-term firm reservations are excluded from the transmission system peak calculation. Short-term firm transactions are less than one year in duration. Including these reservations in the firm transmission system peak calculation without annualizing the

amounts, causes several problems. Including these transactions may result in the peak being skewed based on the data and time of the peak being coincident or non-coincident with the period of the reservation.

Revenues earned from short-term Firm Point-to-Point reservations are being accounted for in the transmission rate by including revenues from these contracts as a credit against the revenue requirement. The effect on the rate is the same as if they were converted to an annualized amount and included in the denominator. However, Western's method is easier to track for audit purposes. Further, there is no negative impact to Western's transmission rates as a result of this practice. Short-term contracts tend to be renewed year after year, but in cases where they are not, including these transactions in the load may also cause significant annual fluctuations in the denominator and not reflect actual trending in load growth or load decline.

16) Section 35.3

The OATT requires Network Operating Committees (NOC) comprised of all NITS customers. In practice, Western has successfully provided NITS with limited use of formal NOC, as defined in the OATT. Western routinely holds individual and group meetings with NITS customers to provide for effective collaboration. Having a single NOC for all of Western would not be practicable, due to the wide geographical dispersion of the system under Western's OATT, and the resulting differences in operational requirements. Western also operates control areas in the eastern and western interconnections, which have unique operating policies that could not be put into a "one size fits all" NOC document. Therefore, NOC will be made optional for Western NITS agreements.

17) Schedule 4

Since Western filed its OATT, the Rocky Mountain Region (RMR) used a public process to modify Energy Imbalance provisions used to bill its customers. These changes include the elimination of the option to allow for repayment-in-kind, and the expansion of the deviation band currently referenced in the OATT. RMR received Commission approval of a broader bandwidth, as well as a complete financial settlement for Energy Imbalance on February 3, 2003.⁸ Western has changed OATT

⁸ United States Department of Energy, Western Area Power Administration-Colorado Missouri Control Area, 102 FERC ¶ 62,071 (2003).

Schedule 4 to clarify that Western has the option to use in-kind or financial repayment and to increase the bandwidth upon Commission approval of a Western rate schedule.

18) Attachment A,3

Western reinserted pro forma tariff language to clarify that the transmission customer may have provided a deposit in accordance with Section 17.3.

19) Attachment A,4

Western clarified how it would handle rollover or renewal requests of existing transmission service. Western's statutory obligation under Reclamation Law to deliver Federal power to Firm Electric Service and Project Use Customers may impact Western's ability to provide transmission service beyond the initial contract term as outlined in Attachment K. For example, new Firm Electric Service Marketing Plans, or status changes pertaining to new Project Use and Firm Electric Service customers may occur. This additional language provides transmission customers with notice of these specific requirements at the time the service agreement is executed. As indicated, Western will insert the specific condition that would limit a transmission customer's rollover or renewal rights in conjunction with developing the particular service agreement.

20) Attachment D

Western updated Regional Reliability Council information to include the current names and to allow for future organizational changes.

21) Attachment F

Western inserted language which clarifies that the transmission customer has provided a deposit and an application fee to Western in its completed application for service.

22) Attachment G

Under the current OATT, Network Operating Agreements (NOA) are required for all NITS contracts in all Western Regions except the Upper Great Plains Region (UGPR), which points to the Mid-Continent Area Power Pool (MAPP) requirements. In practice, Western has successfully provided NITS with only limited use of NOA, as defined in the OATT. Some NITS agreements are simple enough that no special operating provisions are required, and an NOA would be superfluous. Western has executed NOA in cases that require them, and remains willing to establish an NOA in any circumstance where it would be beneficial for Western or a

Transmission Customer to have one. Therefore, NOA will be made optional for each NITS contract in every Region.

23) Attachment J,1

When Western filed its original OATT, it had not yet developed separate rates for transmission and ancillary services to be charged under the OATT. At that time, Western included in Attachment J to the OATT a number of provisions from its General Power Contract Provisions that it felt were applicable to OATT service. One of those provisions, known as the "Change of Rates" provision, allowed Western to adjust its rates on a periodic basis and allowed customers to give notice of intent to terminate service within 90 days after such changes.

In developing separate rates for transmission and ancillary services to be applied under the OATT, Western adopted formula rates for most of the Federal transmission system projects. Under a formula rate, the most current data for revenue requirements and load are inserted into the formula annually, and the result of the formula establishes the charge for that year. While Western does not believe this process constitutes a "Change of Rates", this language leaves open the possibility that a customer may argue that the provision allowed them to terminate service in any year. Such a request would be inappropriate, as the customer is aware when contracting for service that the rate is adjusted annually based on the formula. Therefore, the existing "Change of Rates" provision has been modified.

Western has also eliminated the Transmission Customer's ability to terminate service when Western develops new rates or extends existing rates before the Commission. Western believes that removing a customer's ability to terminate service in this manner is equitable. The remaining Transmission Customers still taking service from Western could be responsible for repayment of facility costs that were incurred due to the terminating customer's request.

24) Attachment J,2.2

When Western submits its annual budget request to Congress, it includes a request for appropriations and a request for obligation authority to spend funds from other sources, such as Trust and Reimbursable accounts. The existing "Contingent upon Appropriations" language in Western's OATT focuses only on continuing appropriations beyond the current fiscal year. Western added "Contingent upon Authorization" language to the

OATT to assure Western is released from the requirement to perform under any contract that would result in Western acting outside congressionally authorized funding levels.

25) Attachments J,4,5,6,

The legal citations have been updated and corrected as appropriate.

26) Attachment J,13

Western, the United States Bureau of Reclamation (Bureau), and the United States Army Corps of Engineers (Corps), have a unique statutory relationship which requires Western to repay to the United States Treasury obligations incurred by those two entities related to the production of power. By law, rates which meet these obligations must be the lowest possible consistent with sound business principles, as outlined in the Flood Control Act.⁹ Requiring the Bureau or Corps to submit deposits to the Transmission Provider or to directly pay for costs associated with interconnection study work under the OATT, including the LGIA or LGIP, would ignore the integrated nature of the Federal power program and will result in additional unnecessary administrative burdens and overhead charges. Therefore, Western reserves the right, at its discretion, to not require the Bureau or the Corps to pay negotiation costs under the LGIP, or submit deposits in whole or in part for study work or for placing reservations in the queue. Western will account for these costs under the OATT properly.

27) Attachment J,14

Western has limited financial resources to fund transmission system upgrades. As a result, Western has a need for flexible participant funding arrangements. Western therefore reserves the right to negotiate participant funding on a case-by-case basis, and has added the following statement to Attachment J of its OATT: "With respect to the issue of participant funding for interconnection Network Upgrades, so that Western may properly and equitably fulfill its responsibility as the Transmission Provider for various facilities owned by other entities (including facilities in which Western has a joint ownership stake), Western reserves the right to negotiate participant funding provisions if and when Western deems necessary, and to incorporate the results of such negotiations into the LGIA."

⁹ 16 U.S.C. § 825(s) (2004).

28) Attachment J, 15

Western has clarified that it is only liable for negligence on behalf of its officers and employees in accordance with the Federal Tort Claims Act.¹⁰ This language is based upon a key requirement of the Anti-Deficiency Act¹¹ and is necessary due to the new obligations Western is committing to under Attachment L, the LGIA and LGIP.

29) Attachment K, Authorities and Obligations

Western updated the current names of its Regional Offices and provided corrected contact information. Specific references to a point of contact and mailing addresses for applying for transmission service were removed from the OATT and will be replaced by a web site on the Western's internet site. Western also updated its current application fees. Western underestimated the hours required to process applications in its original filing. Under the current OATT, each Western Regional Office charges a specific cost-based application fee for processing a firm point-to-point or NITS request of one year or longer. This fee ranges from \$1,300 to \$1,700. Western has reviewed and updated its costs and will standardize this fee at \$3,500 across all Regions.

30) Attachment K, Colorado River Storage Project

Western corrected this provision to reflect the new name of this office and added two projects from which it markets power. This language has also been updated to reflect Regional Reliability Council information and to delete the Region-specific application fee as explained above.

31) Attachment K, Desert Southwest Region

The following language is being inserted into the Desert Southwest Region (DSWR) paragraph of Attachment K:

"For the purpose of implementing this Tariff, references in the Tariff to 'deliveries of long-term firm capacity and energy' include the deliveries of Boulder Canyon Project electric service over the DSWR Transmission System."

The DSWR language to be inserted into the OATT was published in a corrected Federal Register Notice.¹² However, this language was inadvertently left out of the text of the OATT

¹⁰ 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680 (2004).

¹¹ 31 U.S.C. § 1341(a)(1) (2004).

¹² 63 Fed. Reg. 5376 (February 2, 1998).

submitted to the Commission. This language is being corrected as originally intended. This paragraph has also been updated to reflect Regional Reliability Council information and to delete the Region-specific application fee.

32) Attachment K, Sierra Nevada Region

Language has been added to Sierra Nevada Region's (SNR) paragraph of Attachment K which explains that Path 15 has become part of that SNR's transmission system. However, the language clarifies over which transmission facilities SNR is offering OATT service. SNR will not offer service over Path 15, as control of those facilities has been turned over to the California Independent System Operator which offers service over this path under their tariff. This paragraph has also been updated to reflect Regional Reliability Council information and to delete the Region-specific application fee.

33) Attachment K, Upper Great Plains Region

The UGPR language has been changed to eliminate the reference to potential changes in the UGPR transmission system that had yet to be approved by the Commission at the time of the original OATT filing. Since both the Integrated System and associated rates have been approved by the Commission¹³, this language has been eliminated. This paragraph has also been updated to reflect Regional Reliability Council information and to delete the Region-specific application fee.

(B) **LGIP**

- 1) Section 1, Definitions - "Effective Date" and "Tariff", and Sections 3.4, 5.1.1.3, 5.1.2, 5.2, 6.2, 7.3, 11.3, and 11.4

Insofar as Western is not subject to the Commission's jurisdiction under Sections 205 and 206 of the Federal Power Act¹⁴, Western removed language from these definitions and from the listed Sections indicating that Western would, or requiring Western to, file its OATT or a LGIA with the Commission.

- 2) Sections 3.3.2, 3.3.3, 3.3.4, 4.4.4, 6.1, 6.3.1, 6.4, 7.1, 7.2, 7.5, 7.6, 8.1, 8.3, 8.4, 8.5, 10.1

Western is concerned about the binding nature of the deadlines in the pro forma LGIA. As a Federal power marketing

¹³ Missouri Basin Municipal Power Agency, et al., 99 FERC ¶ 61,062 (2002).

¹⁴ 16 U.S.C. §§ 824d, 824e (2004).

agency, Western is a non-profit entity that implements strict cost controls on all aspects of its business, including the establishment of cost-effective staffing levels relative to Western's role as a Transmission Owner and Provider throughout its 15-state service territory. In addition, as a Federal agency, Western is subject to Executive and Congressional oversight regarding staffing, funding, and authorization limits. Levels for these items may be established which limit Western's ability to meet the timeframes proposed in the LGIA. Further, some of these deadlines are impacted by regional planning committee review requirements imposed by Regional Reliability Councils that Western participates in. Given these facts, the pro forma LGIP contains task completion deadlines that would be impossible for Western to consistently meet, and thus Western has modified relevant language within the LGIP so that Western may meet all deadlines using "Reasonable Efforts." Western supports and adheres to the spirit and intent of the Commission's comparability standard and commits to apply the defined standard of "Reasonable Efforts" equally to all generation seeking to interconnect on its system, including that of Federal agencies such as the Bureau and the Corps.

3) Sections 3.6, 5.2

The payment of interest language has been deleted from these provisions inasmuch as Western does not pay interest under the OATT on non-capital expenditures made by other parties. Western notes that these revisions are similar to certain modifications Western proposed in its original OATT filing and which the Commission subsequently accepted.¹⁵

4) Section 4.4.3

Western believes it is appropriate to allow the Interconnection Customer as much flexibility as possible to make changes to Points of Interconnection, including changes made due to unforeseen circumstances, provided existing system conditions can accommodate those changes. Therefore, Western has added language to LGIP Section 4.4.3 allowing the Interconnection Customer such flexibility, as follows: "Any change to the Point of Interconnection, except those deemed acceptable under Sections 4.4.1, 6.1, 7.2 or so allowed elsewhere or otherwise initiated under mutual agreement between Transmission Provider and Interconnection Customer, shall constitute a Material Modification."

¹⁵ Missouri Basin Municipal Power Agency, et al., 99 FERC ¶ 61,062 (2002).

5) Section 8.3, and Attachment A to LGIP Appendix 4

Pro forma LGIP Section 8.3 and Attachment A to LGIP Appendix 4 implicitly require Western to charge the Interconnection Customer only up to the amount of cost estimates provided by Western regarding the construction of Interconnection Facilities. However, a key requirement of the Federal Anti-Deficiency Act¹⁶ restricts Western from obligating funds which have not yet been Congressionally appropriated or authorized for expenditure, and thus Western could potentially violate the act if the costs of construction were to exceed Western's estimates. Consequently, Western added language to LGIP Section 8.3 and to Attachment A to LGIP Appendix 4 stating that, regardless of the provided estimates, Western will charge the Interconnection Customer for all actual amounts, and that payment for any services will be made in advance in accordance with revised LGIA Article 11.5. If Western overestimates these charges, it will refund the dollars against actual dollars spent.

6) Sections 9, 11.2

As a Federal power marketing agency, before beginning construction of any facilities, Western must first conduct a mandatory environmental analysis in accordance with the National Environmental Policy Act (NEPA).¹⁷ Thus, LGIP Sections 9 and 11.2 have been revised to condition Western's offering of a Engineering and Procurement Agreement or a final LGIA upon Western's determination that it may proceed with construction under NEPA, and Western has further revised this language so that Western's NEPA determination is not subject to dispute resolution.

7) Section 11.1

Insofar as Western is not subject to the Commission's jurisdiction under Sections 205 and 206 of the Federal Power Act¹⁸, Western has deleted language from this section that implicitly requires the Commission's approval of the LGIA, and has inserted language clarifying that Western will provide the Interconnection Customer with a copy of Western's pro forma LGIA on file with the Commission.

8) Section 11.2

The LGIP does not explicitly provide for allocation of the cost responsibility for negotiations. However, in Western's

¹⁶ 31 U.S.C. § 1341(a)(1)(2004).

¹⁷ 42 U.S.C. § 4321, et seq. (2004).

¹⁸ 16 U.S.C. §§ 824d, 824e (2004).

experience, the Interconnection Customer will more often than not be the cause of any negotiations that occur. Insofar as Western is a non-profit entity that would be forced to shift the costs of such negotiations to its transmission ratepayers, Western has therefore added language to LGIP Section 11.2 clarifying that the Interconnection Customer shall pay any costs of negotiations.

9) Section 13.1.8

As a Federal entity, Western is not subject to the jurisdiction of state regulatory bodies. Therefore, the requirement that Western submit information to these bodies has been removed.

10) Section 13.2

This language has been revised to clarify that Western is liable to the Interconnection Customer only in accordance with the Federal Tort Claims Act.¹⁹

11) Appendix 2, Appendix 3, Appendix 4, and Appendix 5 to LGIP

Western's title and status as a Federal entity has been specified in the captions of these Appendices. In addition, because Western is not subject to the Commission's jurisdiction under Sections 205 and 206 of the Federal Power Act²⁰, Western deleted language from these Appendices that implicitly requires the Commission's approval of the LGIP.

LGIP Appendix 4 ("Interconnection Facilities Study Agreement") requires the Interconnection Customer to pay all relevant invoices within 30 days of receipt, while Appendices 3 ("Interconnection System Impact Study Agreement") and 5 ("Optional Interconnection Study Agreement") do not contain this requirement. For that reason, Western revised LGIP Appendices 3 and 5 to add explicit language requiring the Interconnection Customer to pay invoices within 30 days of receipt.

(C) LGIA

1) Caption

Western's title and status as a Federal entity has been specified in the caption to the LGIA.

¹⁹ 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680 (2004).

²⁰ 16 U.S.C. §§ 824d, 824e (2004).

2) Article 1, Definitions - "Effective Date" and "Tariff", and Articles 2, 3, and 4.3

Insofar as Western is not subject to the Commission's jurisdiction under Sections 205 and 206 of the Federal Power Act²¹, Western removed language from these definitions and from the listed Articles indicating that Western would, or requiring Western to, file its OATT or a LGIA with the Commission.

3) Article 2.2

LGIA Article 2.2 would allow the LGIA to remain effective indefinitely by stating "this LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request (Term to be specified in individual agreements) and shall be automatically renewed for each successive one-year period thereafter". This language could result in Western violating the Anti-Deficiency Act²², because it obligates Western to rebuild aging Interconnection Facilities without prior Congressional appropriations or authorization to expend funds. In addition, Western believes it is not prudent to commit the use of Federal facilities on a perpetual basis. Accordingly, this Article has been modified to explicitly limit the maximum term of the LGIA to 40 years, along with a requirement that the Interconnection Customer provide five years advance written notice of its intent to extend the term of the LGIA. Western agrees to enter into good faith discussions to extend the term. This modification gives Western the ability to secure necessary construction funds in advance of the need to physically accommodate a LGIA term beyond the typical 40 year lifespan of Interconnection Facilities, thereby providing Western the means to avoid possible violations of the Anti-Deficiency Act.²³

4) Article 2.3.1

Western has revised LGIA Article 2.3.1 to allow the Transmission Provider to terminate the LGIA "if the Generating Facility has ceased Commercial Operation for three (3) consecutive years, beginning with the last date of Commercial Operation for the Generating Facility, after giving the Interconnection Customer ninety (90) Calendar Days advance written notice." This revision is identical to one previously approved by the Commission for the Midwest ISO.²⁴

²¹ 16 U.S.C. §§ 824d, 824e (2004).

²² 31 U.S.C. § 1341 (2004).

²³ See id.

²⁴ Midwest Independent Transmission System Operator, Inc., 108 FERC ¶ 61,027 (2004) at 150-154.

5) Article 2.4

Western is not subject to the Commission's jurisdiction under Sections 205 and 206 of the Federal Power Act.²⁵ Therefore, Western has deleted language from this Article which left open the possibility that the LGIA must be approved by the Commission.

6) Article 5.1.1

Western has revised Article 5.1.1 to reflect its general requirement to comply with Department of Energy standards and directives related to physical infrastructure security. Further, Western believes that it is both necessary and reasonable for this Article to explicitly state that Western shall not be required to undertake any action which is inconsistent with Good Utility Practice, and so Western has made such a modification.

7) Articles 5.1.3, 5.10.1, 5.11, 5.19.1, 24.2, 24.4

As a Federal power marketing agency, Western is a non-profit entity that implements strict cost controls on all aspects of its business, including the establishment of cost-effective staffing levels relative to Western's role as a Transmission Owner and Provider throughout its 15-state service territory. In addition, as a Federal agency, Western is subject to Executive and Congressional oversight regarding staffing, funding, and authorization limits. Levels for these items may be established which limit Western's ability to meet the timeframes proposed in the LGIA. Given these facts, the pro forma LGIA contains task completion deadlines that would be impossible for Western to consistently meet absent significant increases in staffing levels and related costs, and thus Western has modified relevant language within the LGIA so that Western may meet all deadlines using "Reasonable Efforts." Western supports and adheres to the spirit and intent of the Commission's comparability standard and commits to apply the defined standard of "Reasonable Efforts" equally to all generation seeking to interconnect to its system, including that of Federal agencies such as the Bureau and the Corps.

8) Articles 5.1.2, 5.1.4, 5.3, 18.2

Western has eliminated from the LGIA any reference to payment of Liquidated Damages insofar as the possibility of such payment would expose Western to financial exposure above and beyond Congressional appropriations or authorization to expend

²⁵ 16 U.S.C. §§ 824d, 824e (2004).

funds, thereby potentially causing Western to violate the Anti-Deficiency Act.²⁶

9) Article 5.2(5)

Pro forma LGIA Article 5.2(5) allows Western to inspect any Transmission Provider Interconnection Facilities being constructed by the Interconnection Customer, but does not pass the costs of those inspections on to the other party as required by longstanding Western policy. This policy allows Western to directly assign the costs of such inspections directly to those that cause them, thus avoiding the improper shifting of these costs to Western's transmission ratepayers. Accordingly, LGIA Article 5.2(5) has been modified to require the Interconnection Customer to pay Western's costs for inspection of any Transmission Provider Interconnection Facilities being constructed by the Interconnection Customer.

10) Article 5.2(11)

Western's experience is that Interconnection Customers often submit facility designs and drawings in diverse document formats, resulting in significant incremental costs and losses of productivity due to the need to convert these documents into the standard format utilized by Western. Consequently, Western has added language to LGIA Article 5.2(11) requiring the Interconnection Customer to submit "as built" drawings in compliance with Western's standards. A copy of Western's standards will be provided to an Interconnection Customer upon request.

11) Articles 5.13, 14.2, 28.1.1

Western has added language which clarifies that it is governed by Federal or state law, as applicable.

12) Articles 5.17, 5.18

As a Federal entity, Western does not pay taxes as a general rule, and thus any language in that regard has been removed from these Articles.

13) Article 7.4

Pro Forma LGIA Article 7.4 would require Western to inspect and test all Western-owned metering equipment upon installation and at least once every two years thereafter. However, certain Western Regions have established testing policies for state-of-the-art meters that have test intervals

²⁶ 31 U.S.C. § 1341 (2004).

exceeding two years. These testing policies take into consideration resources available for inspection, as well as the need for inspection given the reliability of current equipment. As such, LGIA Article 7.4 has been modified to provide that Western-owned meters will be tested in accordance with Regional meter testing policies posted on the applicable OASIS.

14) Article 8.1

Western has revised LGIA Article 8.1 to clarify that voice communications equipment will be installed at the Interconnection Customer's expense.

15) Article 9.4.2

Western is concerned about the impact of new generators on its control area operations. Although Order No. 2003-B allowed for Transmission Providers to include a generator balancing provision in each interconnection agreement to be filed with the Commission, Western does not make filings under Section 205 of the Federal Power Act.²⁷ Therefore, for the purposes of transparency, Western has included this provision in its LGIA.

16) Article 9.9.2

Western is not subject to the Commission's jurisdiction under Sections 205 and 206 of the Federal Power Act.²⁸ Thus, Western deleted this Article's provision that a dispute be submitted to the Commission for its ultimate resolution.

17) Article 11.4

Western has clarified how it will provide credits for Network upgrades under the LGIA, including methods for calculating interest on funds advanced for these upgrades. These changes reflect Western's policies toward bill-crediting and payment of interest on capital investments associated with generator interconnections. In particular, with respect to the 20-year crediting period limit set forth in Order No. 2003-B, abiding by that limitation could result in a violation of the Anti-Deficiency Act by potentially obligating Western to make a balloon payment at the end of the 20-year period without having first obtained the necessary Congressional appropriations or authorization for expenditure of funds. Consequently, under Article 11.4.1 of Western's pro forma LGIA, Western will credit

²⁷ 16 U.S.C. §§ 824d (2004).

²⁸ id. at §§ 824d, 824e.

the Interconnection Customer's invoices without any restriction as to the period of time under which such crediting will occur.

18) Article 11.5

Pro Forma LGIA Article 11.5 would require Western to accept a guarantee, a surety bond, letter of credit or other form of security in lieu of actual payment for procuring, constructing, and installing Network Upgrades and other such facilities. However, Western does not accept a provision of security to perform such services; rather, it requires advance payment to do so consistent with the Contributed Funds Act.²⁹ Western, therefore, has revised Article 11.5 with language requiring advance payment for all work related to procuring, constructing, and installing Network Upgrades and other such facilities.

19) Article 12

Western has modified the invoice provisions to clarify that Western will not pay interest on money owed to the Interconnection Customer except as expressly provided for in the LGIA. In addition, Western has incorporated the changes regarding payment from Article 11.5.3.

20) Articles 18.1, 18.2

Western cannot agree to indemnify the Interconnection Customer as such agreement would result in violations of the Anti-deficiency Act.³⁰ Thus, changes have been made to Articles 18.1 and 18.2 to reflect this limitation.

21) Articles 18.3, 18.4

As a Federal entity, Western is self-insured and as a practice does not purchase insurance. Western has clarified that Article 18.3 only applies to the Interconnection Customer, and has added Article 18.4 which specifically states that Western shall self-provide the insurance coverage as described in Article 18.3.

22) Article 19

Pursuant to the Federal Anti-Assignment Act³¹, Western cannot allow an Interconnection Customer to assign the LGIA to another party absent Western's concurrence. A change has been made to Article 19 to reflect this requirement.

²⁹ 43 U.S.C. § 395 (2004).

³⁰ 31 U.S.C. § 1341 (2004).

³¹ 41 U.S.C. § 15 (2004).

23) Article 22.1.10

As a Federal entity, Western is not subject to the jurisdiction of state regulatory bodies. Therefore, the requirement that Western submit information to these bodies has been removed from this Article.

24) Article 23

In accordance with its environmental obligations as a Federal entity, Western has clarified that each party shall remedy any release of hazardous substances present at the interconnection or generation site as soon as practicable. Western has also added language that requires all parties to comply with applicable Federal, State and local environmental laws when performing all actions under the LGIA.

25) Article 30.4

As written, the pro forma LGIA does not provide for the incorporation of Western's OATT Attachments J and K, which pertain to, among other things, the budgetary and statutory requirements related to Western's provision of open access transmission and interconnection services. Accordingly, Western has revised LGIA Article 30.4 to incorporate these Attachments by reference into the LGIA.

26) Article 30.11

As a non-jurisdictional entity under Sections 205 and 206 of the Federal Power Act³², Western does not submit its agreements to the Commission. Therefore, this Article has been deleted to clarify that neither Western nor the Interconnection Customer shall have a unilateral right to file the LGIA with the Commission for the purpose of effecting revisions between the parties.

II. PETITION FOR AN EXEMPTION FROM FILING FEES

Western hereby seeks an exemption in lieu of paying a filing fee applicable to petitions for declaratory orders. As an agency of the United States Department of Energy, Western is engaged in official business of the Federal Government in filing this petition for a declaratory order from the Commission that the modifications to its non-jurisdictional OATT, including the LGIA and LGIP, continue to be an acceptable reciprocity tariff.

³² 16 U.S.C. §§ 824d, 824e (2004).

Western is an agency of the United States and, therefore is exempt from filing fees.³³

III. EFFECTIVE DATE

Western requests that the revised OATT, including the LGIP and LGIA become effective February 25, 2005.

IV. SERVICE

Western shall make copies of this filing available for public inspection on its OASIS. A draft Form of Notice in hard copy is included as Appendix G and electronically in .wpd format on the enclosed compact disk. Also included on the compact disk is a complete copy of the filing in .pdf format.

V. CONTENTS OF FILING

Along with this transmittal letter, the documents submitted with this filing include:

Appendix A - Western's proposed OATT redlined, compared with Western's OATT approved by the Commission on April 12, 2002.

Appendix B - Western's proposed LGIP redlined, compared with the pro forma LGIP attached to Order No. 2003-A, including changes listed in Appendix B to Order No. 2003-B.

Appendix C - Western's proposed LGIA redlined, compared with the pro forma LGIA attached to Order No. 2003-A, including changes listed in Appendix B to Order No. 2003-B.

Appendix D - A clean version of Western's OATT.

Appendix E - A clean version of Western's LGIP.

Appendix F - A clean version of Western's LGIA.

Appendix G - A Form of Notice suitable for publication in the Federal Register.

³³ 18 C.F.R. §§ 381.102(a), 381.108(a), and 381.302(c).

VI. COMMUNICATION

Western requests that all correspondence, pleadings, and other communications concerning this filing be served upon:

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Dated this 25th day of January, 2005.

Respectfully submitted,



Ronald J. Klinefelter
Office of General Counsel
Western Area Power Administration

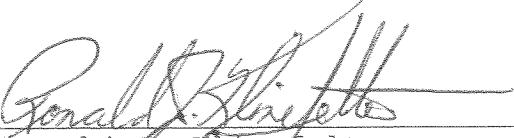
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Lakewood, Colorado, this 25th day of January, 2005.

By:



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